

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS**

PROXENSE, LLC,

Plaintiff,

v.

SAMSUNG ELECTRONICS, CO., LTD. and  
SAMSUNG ELECTRONICS AMERICA, INC,

Defendants.

Civil Action No. 6:21-CV-00210-ADA

**JURY TRIAL REQUESTED**

**ORDER CONCERNING FINAL PRETRIAL CONFERENCE MOTIONS**

Before the Court are Proxense LLC's ("Proxense") and Samsung Electronics, Co., Ltd. and Samsung Electronics America, Inc.'s ("Samsung") motions for summary judgment, *Daubert* motions, motion to strike, and the parties' respective motions *in limine*. The Court held a Final Pretrial Conference concerning these motions on January 3, 2022. During that hearing, the Court heard oral arguments and provided oral rulings on each of the motions. The Court now enters those rulings.

**Defendant Samsung's Motion to Strike the Supplemental  
Expert Report of Dr. Aviel Rubin [ECF No. 148]**

<b>Motion</b>	<b>Ruling</b>
Motion to Strike the Supplemental Expert Report of Dr. Aviel Rubin	Denied. Samsung may depose Dr. Rubin and submit a supplemental expert report by Dr. Nielson. Proxense may then depose Dr. Nielson.

**Defendant Samsung's Motions for Summary Judgment [ECF No. 94]**

<b>Motion</b>	<b>Ruling</b>
Samsung Devices With The Stub App Do Not Infringe, Directly Or Indirectly	Denied, but at the end of Proxense's case, Samsung can re-urge this as a JMOL for lack of evidence, and Proxense should be prepared with evidence in the transcript for the court's determination.
No Direct Infringement For Asserted Method Claims	Denied.
No Infringement Of Method Claims For Devices For Which There Is No Evidence Of A Registered Debit/Credit Card	Denied, but at the end of Proxense's case, Samsung can re-urge this as a JMOL for lack of evidence, and Proxense should be prepared with evidence in the transcript for the Court's determination.
No Infringement Prior To October 2020	Denied, but at the end of Proxense's case, Samsung can re-urge this as a JMOL for lack of evidence, and Proxense should be prepared with evidence in the transcript for the Court's determination.

**Plaintiff Proxense, LLC's Motions for Summary Judgment [ECF No. 97]**

<b>Motion</b>	<b>Ruling</b>
Claim 5 Of The 730 Patent Does Not Violate 35 U.S.C. § 112 ¶ 4	Denied as Moot: Samsung has withdrawn any argument pertaining to whether Claim 5 of the 730 Patent violates 35 U.S.C. § 112 ¶ 4.
There are no disputes of material fact with respect to whether the term “Persistently Storing” Is Indefinite	Denied.
Samsung’s Theory That the phrase “One Or More Codes and Other Data Values” Is Indefinite Is Improper and Unsupported	Denied as Moot: Samsung has withdrawn any argument that “The One or More Codes and Other Data Values” is indefinite.
Samsung Has Not Offered Any Analysis Or Evidence That The Asserted Patents Lack Enablement As To The Terms “Persistently Storing” And “Unable To Be Subsequently Altered”	Denied as Moot: Samsung has withdrawn any argument that the phrases “Persistently Storing” and “Unable to be Subsequently Altered” lack enablement.
Samsung’s Theory Regarding “Smartphone” Is Improper And Unsupported	Denied.
None Of The Asserted Claims Trigger Divided Infringement	Granted.

**Defendant Samsung’s Motion To Exclude Expert Opinions of M. Laurentius Marais and Jennifer Vanderhart [ECF No. 95]**

<b>Motion</b>	<b>Ruling</b>
Motion To Exclude Expert Opinions of M. Laurentius Marais and Jennifer Vanderhart	Denied at this time. After Marais testifies, Samsung may move to voir dire Vanderhart on apportionment.

**Plaintiff Proxense’s Motion to Exclude Testimony of Defendants’ Expert Dr. Nielson [ECF No. 98]**

<b>Motion</b>	<b>Ruling</b>
Daubert Motion To Exclude Testimony Of Defendants’ Expert Dr. Nielson	Denied. If Samsung presents section 101 evidence to the jury, they waive JMOL for <i>Alice</i> step 1. Alternatively, Samsung may present section arguments as a bench legal issue, with presentation of expert testimony. Samsung may also submit for consideration a memo of discussing cases that permit the defendant to present both positions at trial. <sup>1</sup>

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<sup>1</sup> Samsung has filed this brief as ECF No. 157.

**Plaintiff Proxense, LLC's Motions *in Limine* [ECF No. 132]**

<b>Motion</b>	<b>Ruling</b>
<b>Proxense's MIL 1</b> to Exclude Evidence or Argument Related to any Unelected Prior Art	The parties may object if the opposing party offers argument or evidence not in an expert report.
<b>Proxense's MIL 2</b> to Exclude Evidence or Argument Related to any Alleged Non-infringing Alternative not Disclosed in Expert Reports or were not Acceptable or Available During the Relevant Period for Damages Calculations	The parties may object if the opposing party offers argument or evidence not in an expert report.
<b>Proxense's MIL 3</b> to Exclude Argument or Evidence Related to any Expert Theories or Opinions that were not Timely Disclosed in Final Invalidity Contentions	The parties may object if the opposing party offers argument or evidence not in an expert report. Denied as to Samsung's argument regarding "smartphone."
<b>Proxense's MIL 4</b> to Exclude References to Claims, Patents, Defenses, Theories that are no Longer at Issue for Trial, Including Characterizations of Legal Arguments made in any Pre-trial Motions	Granted. No argument made in any pre-trial motion will be discussed during trial. <i>See</i> Jan. 3, 2023, Tr. at 132:20-24.
<b>Proxense's MIL 5</b> to Exclude Reference to the Relative Importance of Claim Elements, Including any Statement that any Specific Claim Element is More Important than Others	Granted.
<b>Proxense's MIL 6</b> to Exclude any Evidence, Testimony, Argument, or Suggestion Disparaging Proxense for not Successfully Selling or Licensing the Patents	Granted in part; Denied in part. Parties are precluded from introducing evidence or argument disparaging the opposing party. The parties are permitted to introduce evidence regarding Proxense's attempts to sell or license the patents in suit. <i>See</i> Jan. 3, 2023, Tr. at 133:15-134:10.
<b>Proxense's MIL 7</b> to Exclude any Reference that Because Proxense has not Accused or Sued a Third Party of Infringing the Patents-in-Suit, that the Accused Products do not Infringe or that Another Party's Products Are Non-Infringing Alternatives	Granted-in-part, denied-in-part. Granted to exclude any implication that any third party is not infringing because it hasn't been sued. Samsung may still present expert opinion that certain alternatives are noninfringing if they provide a technical basis for the noninfringement opinion.
<b>Proxense's MIL 8</b> to Exclude References to any of Samsung's Patents; Including any Statement Implying that Samsung's Patents also Cover the Accused Products	Granted in part; Denied in part. Samsung may speak at a macro level about its innovation history and that Samsung values patents.

<b>Proxense's MIL 9</b> to Exclude Evidence or Argument Related to Other Patents as a Defense to Damages Due to "Royalty Stacking"	Proxense may object if Samsung's damages expert presents opinions that implicate royalty stacking. <i>See</i> Jan. 3, 2023, Tr. at 139:10-13.
<b>Proxense's MIL 10</b> to Exclude Evidence or Argument that the Damages Claimed are Unprecedented or Outrageous	Denied.
<b>Proxense's MIL 11</b> to Exclude any Argument Relating to Proxense's Other Agreements	Granted.
<b>Proxense's MIL 12</b> to Exclude References to Samsung's Reputation in the Industry, Innovation, or Philanthropy	Denied.
<b>Proxense's MIL 13</b> to Exclude References to Prior Judicial Opinions Pertaining to any of Proxense's Expert Witnesses	Granted. But if a witness opens the door, parties may approach the bench.
<b>Proxense's MIL 14</b> to Exclude Evidence or Argument Related to any Source Code or Source Code Version that was not Produced in this Litigation	If a party wishes to make a discovery argument, they will approach the bench beforehand. <i>See</i> Jan. 3, 2023, Tr. at 86:11-14.
<b>Proxense's MIL 15</b> to Exclude any Evidence or Argument Related to the Pocket Vault System, Including any Attempts to Introduce Physical Exhibits of Pocket Vault Devices	Denied.
<b>Proxense's MIL 16</b> to Preclude Samsung from Arguing that the Parties' Non-Disclosure Agreement Precludes any Claim for Willful Infringement or that Proxense Cannot Discuss the Parties' Post-NDA Discussions	Granted in part. Post-NDA communications are excluded. If Samsung wants to violate the MIL to discuss post-NDA communications, that will open the door for Proxense to violate the NDA. <i>See</i> Jan. 3, 2023, Tr. at 157:11-22.
<b>Proxense's MIL 17</b> to Exclude References to the Pending Ex Parte Reexamination of the Patents-in-Suit	Granted.
<b>Proxense's MIL 18</b> to Exclude Evidence or Argument that a Damages Award to Proxense Would Cause a Loss of Jobs, Increase Prices for Products, or Create Other Economic or Financial Consequences	Granted.


**Defendant Samsung's Motions *in Limine* [ECF No. 126]**

<b>Motion</b>	<b>Ruling</b>
<b>Samsung's MIL 1</b> to Exclude Evidence or Argument by Proxense that is Subject to the Parties' Non-Disclosure Agreement	Granted in part. Post-NDA communications are excluded. If Samsung wants to violate the MIL to discuss post-NDA communications, that will open the door for Proxense to violate the NDA. <i>See</i> Jan. 3, 2023 Tr. at 157:11-22

<b>Samsung’s MIL 2</b> to Exclude Evidence or Argument Related to the Amount for which Samsung Acquired LoopPay	Denied as to the publicly-available information regarding the LoopPay acquisition.
<b>Samsung’s MIL 3</b> to Exclude Evidence or Argument Relating to Patent Valuations Based on Public Information on Which Neither Damages Expert Relies	The parties may object if the opposing party offers argument or evidence not in an expert report.
<b>Samsung’s MIL 4</b> to Exclude Evidence or Argument that any Purported Discovery Deficiencies Limited Proxense’s Ability to Prove its Case	If a party wishes to make a discovery argument, they will approach the bench beforehand. <i>See</i> Jan. 3, 2023, Tr. at 86:11-14.
<b>Samsung’s MIL 5</b> to Exclude Evidence or Argument Relating to the Results of Patent Office Proceedings Involving the Asserted Patents	Granted.
<b>Samsung’s MIL 6</b> to Exclude Evidence or Argument Relating to Samsung’s Overall Sales, Profits, Revenues, Size, Financial Resources, or Executive Compensation	Granted in part. If Proxense believes there is something that needs to come in, they may approach the bench. <i>See</i> Jan. 3, 2023, Tr. at 164:15-18.
<b>Samsung’s MIL 7</b> to Exclude Evidence or Argument Relating to Samsung’s Status as a Foreign Company	Denied.
<b>Samsung’s MIL 8</b> to Exclude Evidence or Argument Relating to Unaccused Samsung Products and other Lawsuits in which Samsung has been Involved	Granted.
<b>Samsung’s MIL 9</b> to Preclude Proxense and its Experts from Testifying about a Construction of “Third-Party” not Adopted by the Court	Denied.
<b>Samsung’s MIL 10</b> to Preclude Proxense’s Experts from Offering Opinions not Included in their Expert Reports	Granted. The parties may object if the opposing party offers argument or evidence not in an expert report.
<b>Samsung’s MIL 11</b> to Exclude any Argument, Evidence, Testimony, or Reference Claiming that Samsung “Copied,” “Stole,” or “Pirated” the Asserted Patents and Proxense’s Technologies	Granted.
<b>Samsung’s MIL 12</b> to Exclude Evidence or Argument that Samsung’s Alleged Infringement Harmed Proxense’s Business	Granted.
<b>Samsung’s MIL 13</b> to Exclude Argument Regarding the Presumption of Validity	Denied.
<b>Samsung’s MIL 14</b> to Exclude Evidence or Argument Regarding Theories of Infringement not in Proxense’s Infringement Contentions	Denied.

<b>Samsung's MIL 15</b> to Exclude Evidence or Argument Contending the Asserted Patents are Essential to any Standard	Denied as moot because Plaintiff's counsel represented to the Court he's not going to argue that they are standard essential based on any EMVCo standard.
<b>Samsung's MIL 16</b> to Exclude any Statements Related to a Witness's Choice to Testify in his or her Native or Chosen Language	Denied.
<b>Samsung's MIL 17</b> to Exclude Evidence, Argument, Testimony, Insinuation, or Assertion that Samsung had a Duty to Obtain an Opinion of Counsel Letter and by not Doing so Infringement is Willful	Granted.
<b>Samsung's MIL 18</b> to Exclude Evidence or Argument that Samsung Agreed that Samsung Pay had "16+M Registered Users"	The parties may approach the bench if this issue arises at trial.

SO ORDERED and SIGNED this 12th day of January, 2023.

  
 ALAN D ALBRIGHT  
 UNITED STATES DISTRICT JUDGE